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02-278

Federal Communications Commission
Consumer & Governmental Affairs Bureau
Washington, D.C. 20554

CGB

SEP 26 2003

Control No. 0302670/aw

The Honorable Terry Everett
U.S. House of Representatives
2312 Rayburn House Office Building
Washington, D.C. 20515

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OCT 10 2003

Federal Communications Commission
Office of the Secretary

Dear Congressman Everett:

Thank you for your letter on behalf of your constituent, Mr. Bob O'Neal of O'Neal Agency, Inc., regarding the Federal Communications Commission's (Commission) recent amendment to the rules implementing the Telephone Consumer Protection Act of 1991 (TCPA). Specifically, he expresses concern that the Commission reversed its prior conclusion that an "established business relationship" constitutes the necessary express permission to send an unsolicited facsimile advertisement. He indicates that requiring such express permission to be in writing will place onerous burdens on associations that wish to fax their members.

On September 18, 2002, the Commission released a Notice of Proposed Rulemaking (NPRM) in CG Docket No. 02-278, seeking comment on whether it should change its rules that restrict telemarketing calls and unsolicited fax advertisements, and if so, how. The NPRM sought comment on the option to establish a national do-not-call list, and how such action might be taken in conjunction with the national do-not-call registry rules adopted by the Federal Trade Commission (FTC) and the numerous state do-not-call lists. In addition, the Commission sought comment on the effectiveness of the TCPA's unsolicited facsimile advertisement rules, including the Commission's determination that a prior business relationship between a fax sender and recipient establishes the requisite consent to receive advertisements via fax. The Commission received over 6,000 comments from individuals, businesses, and state governments on the TCPA rules.

The record in this proceeding, along with our own enforcement experience, demonstrated that changes in the current rules are warranted, if consumers and businesses are to continue to receive the privacy protections contemplated by the TCPA. As explained in the Commission's Report and Order released on July 3, 2003, the record indicated that many consumers and businesses receive faxes they believe they have neither solicited nor given their permission to receive. Consumers emphasized that the burden of receiving hundreds of unsolicited faxes was not just limited to the cost of paper and toner, but includes the time spent reading and disposing of faxes, the time the machine is printing an advertisement and is not operational for other purposes, and the intrusiveness of faxes transmitted at inconvenient times, including in the middle of the night.

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As we explained in the Report and Order, the legislative history of the TCPA indicates that one of Congress' primary concerns was to protect the public from bearing the costs of unwanted advertising. Therefore, Congress determined that companies that wish to fax unsolicited advertisements to customers must obtain their express permission to do so before transmitting any faxes to them. The amended rules require all entities that wish to transmit advertisements to a facsimile machine to obtain permission from the recipient in writing.

The Commission's amended facsimile advertising rules were initially scheduled to go into effect on August 25, 2003. However, based on additional comments received since the adoption of the July Report and Order, the Commission, on its own motion, determined to delay the effective date of some of the amended facsimile rules, including the elimination of the established business relationship exemption, until January 1, 2005. The comments filed after the release of the Report and Order indicate that many organizations may need additional time to secure this written permission from individuals and businesses to which they fax advertisements. Enclosed is a copy of the Commission's Order on Reconsideration, released on August 18, 2003.

We appreciate Mr. O'Neal's comments. We have placed a copy of his correspondence in the public record for this proceeding. Please do not hesitate to contact us if you have further questions.

Sincerely,

The image shows a handwritten signature in dark ink, which appears to read "K. Dane Snowden". To the left of the signature, there is a small, stylized mark that looks like a capital "F" with a horizontal line extending to the right.

K. Dane Snowden
Chief
Consumer & Governmental Affairs Bureau

Enclosures

TERRY EVERETT
2D DISTRICT, ALABAMA

COMMITTEE ON ARMED SERVICES
CHAIRMAN, STRATEGIC FORCES
TACTICAL AIR AND LAND FORCES

COMMITTEE ON AGRICULTURE
SPECIALTY CROPS AND FOREIGN AGRICULTURE
PROGRAMS

GENERAL FARM COMMODITIES
AND RISK MANAGEMENT

COMMITTEE ON VETERANS' AFFAIRS
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PERMANENT SELECT COMMITTEE ON
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Congress of the United States
House of Representatives

Washington, DC 20515-0102

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101 NORTH MAIN STREET
OPP, AL 36467
(334) 493-9253

September 2, 2003

*CCB
TCPPA
2670*

Honorable Michael Powell
Chairman
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

RE: Bob O'Neal
O'Neal Agency, Inc.
P.O. Drawer 1067
Andalusia, AL 36420

Dear Chairman Powell:

Enclosed is correspondence from my constituent, above, regarding his concern about the proposed changes to the regulations that implemented the Telephone Consumer Protection Act of 1991 and how those changes could impact businesses and associations.

I will appreciate your affording my constituent all due and appropriate consideration under the law, and any information you are able to provide. I will be grateful if you will respond to me at my Washington office in a form that I may share with my constituent. My address is 2312 Rayburn Building, Washington, D.C. 20515.

Thank you in advance for your prompt attention to this matter.

Sincerely,

Terry Everett
TERRY EVERETT

TE/trl

Enclosure

O'NEAL AGENCY, INC.
P.O. DRAWER 1067
ANDALUSIA, AL 36420
PHONE: (334)222-3111
FAX: (334)222-5011

August 7, 2003

Rep. Terry Everett
2312 Rayburn House Office Building
Washington, D.C. 20515-0102

Rep. Terry Everett,

I am writing to alert you to the recent actions taken by the FCC to amend the regulations that implement the Telephone Consumer Protection Act of 1991 (TCPA). The FCC has decided, without the proper input from the business and association communities, to modify the current law by doing away with the "established business relationship" provision pertaining to fax advertisements. This amendment will place onerous administrative and economic burdens by requiring "expressed written consent" from their own customers or members prior to sending a fax advertisement. I hope you share in my concern over this onerous restriction of legitimate commercial activity.

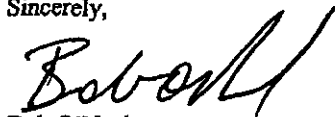
The new FCC reading of the TCPA prohibits an person or entity from sending any fax that contains an unsolicited advertisement which is defined as "any material advertising the commercial availability or quality of any property, good, or service which is transmitted to any person without that person's prior express invitation or permission." As a result, the established business relationship is no longer sufficient to permit faxes to be transmitted. Associations and businesses are now faced with the challenging administrative, legal, economic and record keeping ramifications that will arise thanks to new FCC changes.

The proposed changes, which are scheduled to go into effect on August 25, 2003 - 30 days after they were published in the Federal Register on July 25, 2003, will create a significant economic and labor-intensive burden for the association and business communities. The adjustment in the TCPA will require signed written consent to allow faxes to be sent that contain unsolicited advertisements. It would even require written consent for faxes pertaining to events such as annual meeting.

While these changes may be suitable for residential telephone numbers as the new Do Not Call registry provides, they are certainly not acceptable for agent-to-client and association-to-member facsimile communications. Many businesses and associations rely on faxes as a prime source of communication and marketing to meet the needs of their members.

With penalties reaching \$11,000 per unauthorized fax, few associations or small businesses can financially endure such a penalty. The proposed FCC changes are a prime example of an idea where the unintended consequences and disadvantages far outweigh the benefits. Please join me in requesting FCC halt efforts to change the current TCPA.

Sincerely,



Bob O'Neal